

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	David H. Coar	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	01 C 1505	DATE	8/6/2002
CASE TITLE	Holy Cross Hospital v. Bankers Life and Casualty Company and HealthStar, Inc., et al		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due ____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due ____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ☒ [Other docket entry] For the reasons stated in the attached Memorandum Opinion and Order, defendants', Unicare Life and Health Life Insurance Company and Alta Health and Life Insurance Company, motions to dismiss plaintiff's, Holy Cross Hospital, amended complaint is granted. [Doc. #s 76, 78].

David H. Coar

(11) ☒ [For further detail see order attached to the original minute order.]

<input checked="" type="checkbox"/> No notices required, advised in open court. <input checked="" type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input checked="" type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	courtroom deputy's initials vg(lc)	U.S. DISTRICT COURT CLERK 02 AUG - 5 PM 5:53	5 number of notices	Document Number 120
			AUG 07 2002 date docketed	
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state law claim against defendants for discounts taken on bills rendered to insureds who did not obtain their health coverage through ERISA plans.

In both Counts, Holy Cross alleges that it is the assignee of its patents' health insurance benefits.

Unicare and Alta have moved to dismiss Holy Cross' claims.

Discussion

The defendants argue that they are not proper in an action to obtain benefits under Section 502 of ERISA. They also argue that no supplemental jurisdiction exists for Holy Cross' state law claims if they are not proper defendants to an ERISA claim. This court agrees.

Under Section 1132(a)(1)(B) a participant in an employee welfare benefit plan covered by ERISA may bring a civil action "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." In this circuit, it is well-established that actions to recover ERISA plan benefits may only be brought against the employee welfare benefit plan itself. See Garrat v. Knowles, 245 F.3d 941, 949 (7th Cir. 2001); Jass v. Prudential Healthcare Plan, Inc., 88 F.3d 1482, 1490 (7th Cir. 1996) (rejecting a denial of benefits claim brought against individual defendant and ruling "the appropriate defendant for denial of benefits claim would be the plan."); see also Riordan v. Commonwealth Edison Co., 128 F.3d 549, 551 (7th Cir. 1997). Further, several courts in the Northern District, including this court, have followed the Seventh Circuit's decision in Jass to hold that the only proper defendant to a plan beneficiary's claim for ERISA plan benefits is the plan itself. See Mathisen v. Sundance Homes, Inc. and Great West Life & Annuity Ins. Co., No. 97 C 1305, *slip. op.* (N.D. Ill. Sept. 27, 2000); Carguti v. The Long Term

Disability Plan for Salaried Employees, et al., No. 01 C 5863, slip. op. (N.D. Ill. Oct. 3, 2001); see e.g., Anderson v. Illinois Bell Telephone Co., 961 F. Supp. 1208 (N.D. Ill. 1997) (dismissing Section 1132(a)(1)(B) claim against employer holding that plaintiff/beneficiary is required to sue the plan); Fortmann v. Avon Products, Inc., 1999 WL 160258, *4 (N.D. Ill. 1999) (finding that since the employer and the plan are not the same entity, plaintiff/beneficiary only may bring suit against the plan under Section 1132(a)(1)(B) claim); Frank v. Ameritech Corp., 1999 WL 1011107, *3 (N.D. Ill. Oct. 12, 1999); Witowski v. Tetra Tech, Inc., 38 F.Supp.2d 640, 644 (N.D. Ill. 1998); Wyluda v. Fleet Financial Group, 2000 WL 1264617, *2 (E.D. Wis.).

In count I of its amended complaint, Holy Cross seeks to obtain benefits under Section 502 from plan insurers Alta and Unicare, not the plan itself and therefore count I must be dismissed as to the defendants. Holy Cross argues that both the Seventh Circuit and the Supreme Court have construed Section 502 to allow claims against insurers like Unicare and Alta for benefits allegedly withheld under ERISA plans.

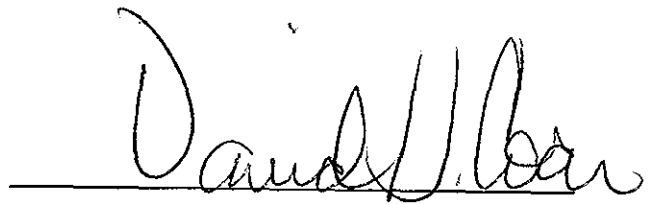
In support of its position, Holy Cross points this court to the Supreme Court's decision in Metrolitan Life Ins. Co. v. Taylor, 481 U.S. 58 (1987) as well as the Seventh Circuit's holdings in Brundage-Peterson v. Compicare Health Servs. Ins. Corp., 877 F.2d 509 (7th Cir. 1989), and Kennedy v. Connecticut Gen. Life. Ins. Co., 924 F.2d 698 (7th Cir. 1991). These cases, however, do not undermine the Seventh Circuit's subsequent holding in Jass. None of these cases directly examine the issue of whether an insurer (or any entity other than the plan) was a proper defendant to a claim under Section 502(a) of ERISA. For example, the court in Kennedy addressed the issue of who can sue for ERISA benefits, not the question of what entity is the proper defendant in such an action. Consequently, the plaintiff has not provided sufficient argument or precedent

to convince this court that the Seventh Circuit's holding Jass allows Holy Cross to sue plan insurers Alta and Unicare.

Conclusion

For the foregoing reasons, the defendants' motion to dismiss counts I and II of Holy Cross' amended complaint as to Alta and Unicare is GRANTED.

Enter:

A handwritten signature in black ink, appearing to read "David H. Coar", is written over a horizontal line.

David H. Coar
United States District Judge

Dated: August 6, 2002